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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,752

02/07/2006

Keiko Ikeda

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7590

09/12/2008

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EXAMINER

STEADMAN, DAVID J

ART UNIT

PAPER NUMBER

1656

MAIL DATE

DELIVERY MODE

09/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/541,752</p>	<p>Applicant(s) IKEDA, KEIKO</p>	
	<p>Examiner David J. Steadman</p>	<p>Art Unit 1656</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3,4 and 6-9.
- Claim(s) withdrawn from consideration: 5.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 7/8/05
13. ☐ Other: _____.

/David J. Steadman/
Primary Examiner, Art Unit 1656

Continuation of 3. NOTE: Initially, it is noted that applicant's submission of references AG, AI, and AJ of the IDS filed on 7/8/05 is acknowledged and Form PTO/SB/08 is attached hereto. Applicant's amendment after final rejection, filed on 8/27/08, is acknowledged. The amendment has not been entered because entry of the amendment would require at least further consideration and a new search for reasons that follow. As noted by applicant (instant remarks at p. 8, top), the claims have been amended "to recite a target protein fused to a restricted region". According to applicant's remarks, the phrase "fused to" is intended to be a direct fusion of a target protein to "a restricted region". However, it is known in the art that two polypeptide moieties of a fusion protein are often separated by a linker but are still considered to be "fused". Because MPEP 2111 directs the examiner to give claims their broadest reasonable interpretation in light of the specification, at least further consideration is required to determine what definition - if any - is given to the phrase "fused to" and how the phrase is to be interpreted in light of the specification. For example, is the term limited to being a direct fusion of a target protein to a restricted region, or can one reasonably interpret the claims as meaning a fusion of a target protein and a restricted region where the two moieties are indirectly fused and the sequence of amino acids 1-40 of B. mori strain H CPV serves as a linker. Even assuming arguendo the limitation of "fused to" was interpreted as being a direct fusion of the target protein to amino acid 41, which may obviate the outstanding prior art rejections, because this is a newly added limitation that has yet to be presented for examination on the merits, at least a new prior art search would be required.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration in the reply filed on 8/27/08 has been fully considered, however, the amendment does not place the application in condition for allowance. As noted above, the amendment has not been entered because entry of the amendment would require at least further consideration and a new search. See MPEP § 714.13. In view of the non-entry of the amendment, applicant's arguments are not found persuasive to overcome the outstanding rejection(s) as set forth in the final Office action mailed on 5/29/08 for the reasons of record stated therein.